

It appears that there are two views as to the true analysis of the defrauded purchaser's cause of action against the vendor. On one view it is an action for damages for fraud (*per* A.L. Smith L.J. in *Grant v. Gold Exploration & Development Syndicate Ltd.*,⁽³⁾ at page 245). On another it is a quasi-contract for monies had and received (*per* Williams L.J. in the *Hovenden* case (above) at page 43). The learned authors of the latest edition of *Halsbury's Laws of England* suggest that both views are correct (see 4th Ed. Vol. 1: Agency, Paragraph 836 note 3).

In the case of *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd.*,⁽⁴⁾ the claim was to recover a prepayment of £1000 made on account of the price under a contract which had been frustrated. The claim was for money paid for a consideration which had failed. Lord Wright in his judgment said (at page 61):—

"It is clear that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution."

Lord Wright ended his analysis by saying (at page 64):

"In fact, the common law still employs the action for money had and received as a practical and useful, if not complete or ideally perfect, instrument to prevent unjust enrichment, aided by the various methods of technical equity which are also available, as they were found to be in *Sinclair v. Brougham*."

It is well-established that the defrauded principal is entitled when he becomes aware of the true facts, at his option, to have the contract rescinded. As James L.J. said in *Panama and South Pacific Telegraph Co. v. India Rubber, Gutta Percha & Telegraph Works Co.*,⁽⁵⁾ at page 527:

"I am of the opinion that where anything in the nature of a fraud in the eye of this court is committed, a man has a right at once to sever the connection; and I cannot bring my mind to doubt, that if you find a case where, in the contemplation of this court, a principal is conspiring with the servant of the other principal to cheat his master in the execution of a contract, then in common sense, common justice, common honesty, and in this court, the master is entitled to say, 'I will have nothing more to do with the business;' and in this court a surreptitious sub-contract with the agent is regarded as a bribe to him for violating or neglecting his duty."

The appellants desire to raise in this action that the contracts sued upon are corrupt and illegal and contrary to public policy. They submit that it would be contrary to public policy to permit recovery in this case.

It is clear law that the contract between the briber and the recipient of the bribe is an illegal contract and it cannot form the basis of a claim before the courts (see *Bone v. Ekless*⁽⁶⁾ and *Harrington v. Victoria Graving Dock Co.*⁽⁷⁾).

Here the respondents are suing for a price which the appellants allege was fraudulently agreed between them and the appellants' dishonest servant. It is submitted by the appellants that the court will not

A lend its aid to such a claimant suing for the fruits of dishonesty.

We were of the view that if the allegations of the appellants can be established the appellants have a good defence to the action and a good counterclaim and set-off which exceeded the respondents' claim.

B At the present stage there is a considerable conflict of evidence. The specific examples of conflict concern the roles played respectively by Calvert and Panjwani. The respondents have not said what the precise role of Panjwani was. The appellants have in their affidavits set out as to how the respondents' prices compare with the fair market price. The respondents on the other hand have made no similar effort but they contented themselves at this stage with a bare denial and a counter charge. Obviously the conflict of evidence can only be resolved by a trial.

It is quite plain on the face of the affidavits that have been filed that there are triable issues.

D For these reasons we allowed the appeal.

Appeal allowed.

Solicitors: Rodyk & Davidson; P.T. Wong & Co.

KHOO CHIANG POH v. COSMIC INSURANCE CORPN. LTD.

[C.A. (Chua, Choor Singh & Rajah JJ.) July 20, 1977]
[Singapore — Civil Appeal No. 10 of 1976]

Companies — Pre-incorporation contract — Whether ratified by resolution of company — Companies Act (Cap. 185), s. 35(1).

F In this case the learned trial judge was invited by counsel for both parties to decide on two preliminary issues. The first was whether a letter signed by twelve persons including the appellant constituted a pre-incorporation contract between the appellant and the other eleven persons, as agents for the respondent company which was subsequently incorporated, under which the appellant was constituted Managing Director for life. The second issue was whether the contract had been ratified by resolution of the defendant's directors. The learned trial judge answered both questions in the negative. The appellant appealed.

Held: (1) the letter clearly set out the agreement which had been reached that the appellant should be the Managing Director for life;

(2) the pre-incorporation contract had been ratified by the resolution of the company;

H (3) the substance of the letter fell within the ambit of section 35(1) of the Companies Act and was duly ratified by the said resolution.

COURT OF APPEAL.

Appellant in person.

J. Grimberg for the respondents.

I **Rajah J.** (delivering the judgment of the Court): At the end of the hearing of the appeal we allowed the appeal and said that we would give our reasons later. We do so now.

The learned trial judge at the commencement of the trial in Suit 203 of 1974 was invited by counsel of both parties to decide on two preliminary ques-

tions. The first was whether upon its true construction, a letter dated August 15, 1971, signed by twelve persons including the plaintiff and addressed to Messrs. H.T. Sam & Co., Advocates and Solicitors, constituted a pre-incorporation contract between the plaintiff on the one hand and the remaining eleven persons on the other hand, as agents for the defendants, the defendants having been subsequently incorporated as a public company on September 16, 1971.

The aforesaid letter reads as follows:—

“To: Messrs H.T. Sam & Co.,
Advocates & Solicitors,
35-B, New Bridge Road,
Singapore

re: **COSMIC INSURANCE CORPORATION LIMITED**

1. We the undersigned, the Promoters of the above proposed Company hereby confirm that the Memorandum & Articles of Association of Cosmic Insurance Corporation Limited shall be thoroughly reviewed and amended by Messrs. H.T. Sam & Co. to suit the requirement of the Companies Act or the Insurance Commissioner and to incorporate same on our behalf with the Registrar of Companies.

2. We confirm that you are given full authority to act on our behalf to seek formal approval from the Commissioner of Insurance to underwrite insurance business of all kinds decided by the Promoters and to finalise whatever necessary document and proceedings in connection or related to or incidental to the formation of the Insurance Company under the aforesaid name.

3. We agree to deposit each of our intended contribution towards the paid up capital to Messrs. H.T. Sam & Co., Solicitor for Cosmic Insurance Corpn. Ltd.

4. We hereby agree to the following matters discussed at the meeting:—

- (a) Mr. Khoo Chiang Poh shall be the Managing Director for life unless he resigns, dies or commits an offence under the Companies Act or is prohibited to become a Director under the Companies Act for any offences;
- (b) That the detailed description of the post to be held by the Promoters as per list marked ‘A’ shall form the basis of the members of the Board of Directors;
- (c) To accept Mr. Liew Sing Hun to be the Manager of the proposed Insurance company subject to contract of which full details of the terms of employment, conditions of service, power of the Manager, duties of the Manager and other conditions, if any, shall be finalised by Mr. Khoo Chiang Poh upon discussion by the Board of Directors with the assistance of Messrs. H.T. Sam & Co.;
- (d) That Mr. Khoo Chiang Poh and the Manager shall recruit suitable personnels to fill any posts sufficient enough to enable the insurance company operational. Mr. Khoo Chiang Poh shall have the right to dismiss any staff and to fix the remuneration salary and so on of the staff subject of course to contract working in close liaison with Messrs. H.T. Sam & Co. for the terms and conditions of service. Mr. Khoo Chiang Poh shall report the progress of the company and shall be responsible to the Board of Directors;
- (e) We confirm that the Authorised capital stands at \$3,000,000 with the initial pay up of 1.2 million dollars. The \$300,000 deposit shall be provided for in cash/securities. If in cash/securities Mr. Khoo Chiang Poh in liaison with M/S. H.T. Sam & Co. shall finalise such deposit payment;
- (f) The maximum number of the Directors shall be twenty one (21) who shall be Directors for life subject to his removal on account of resignation, death or prohibition or disqualification for being a Director under the Companies Act;
- (g) Shares of the Directors for life shall not be transferable to any person whom the Directors consider to be undesirable to admit as a member of a company;
- (h) we agree that car owners who purchase insurance with the proposed new company can be offered Preferential shares of certain denominations. Such shares shall be

offered to the public (that is the car owners who buy insurance from us) at a premium at par value of the Preferential shares as an investment and inducement to insure with the proposed new company;

- (i) we agree initially to start with General Insurance inclusive of motor excepting life. The other types of insurance will be taken out when the Company feels the necessity to extend coverage for life and other insurance business;

(k) the proposed new company shall also establish subsidiary companies, namely:—

- (i) hire purchase
- (ii) property investment
- (iii) co-operative society along lines of the Automobile Association.

5. The subsidiary company shall bear the name of Cosmic as the first identical word in all the subsidiary companies.

Dated the 15th day of August, 1971.”

Secondly, whether if the said letter did constitute a pre-incorporation contract between the plaintiff and the defendants, the said contract was ratified by the defendants by resolution of the defendants’ directors passed at the first meeting of the Board of Directors of the defendants on September 26, 1971.

The answer of the learned trial judge to the first question that was submitted to him was in the negative. We do not agree with this finding of the learned trial judge for in our opinion the letter of August 15, 1971 clearly sets out in paragraph 4 the agreement which had been reached, prior to formation of the company, between the plaintiff and its eleven other promoters whose signatures appear on the said letter to the effect that the plaintiff “shall be the Managing Director for life unless he resigns, dies or commits an offence under the Companies Act or is prohibited to become a Director under the Companies Act for any offences;”. To hold otherwise would, it seems to us, do violence to the language used in paragraph 4. We do not think that the plaintiff would have spent so much of his time and energy had it not been for such an agreement.

The answer of the learned trial judge to the second question was also in the negative, that is, the defendant company did not ratify the said pre-incorporation contract, but entered into a fresh contract of employment with the plaintiff under Resolution No. 2, namely,

“Resolved that Mr. Khoo Chiang Poh be appointed Managing Director and holds office for life in accordance to the Articles and Memorandum of Association and is responsible to the Board of Directors.”

which was passed at the first meeting of directors of the defendant company held on September 26, 1971. Here again we do not agree with the learned trial judge. We find that the said pre-incorporation contract was ratified by the defendant company by virtue of the said Resolution No. 2. It is true that the words used in the said Resolution, namely, that the plaintiff “holds office for life in accordance with the Articles and Memorandum of Association and is responsible to the Board of Directors” are not the same as those used in the said pre-incorporation contract. However, a close and careful reading of the pre-incorporation contract together with Article 96 of the Articles and Memorandum of Association of

the said company and section 128 of the Companies Act will reveal that the said Resolution No. 2 is in effect a ratification of the pre-incorporation contract.

In our view the substance of the letter of August 15, 1971 clearly falls within the ambit of section 35(1) of the Companies Act and was duly ratified by the said resolution. The appeal was allowed and the case remitted to the trial judge for hearing.

Appeal allowed.

Solicitors: *Drew & Napier.*

**RE ROBINSON'S;
PORTUGUESE MISSIONS IN CHINA
AT SINGAPORE & ORS. v.
COLLECTOR OF LAND REVENUE, SINGAPORE**

[C.A. (Wee Chong Jin C.J., Chua & D'Cotta JJ.)
September 29, 1977]

[Singapore — Case Stated No. 1 of 1977]

Land Acquisition — Acquisition within 6 months of land devastated or affected by fire — Market value — Compensation — Loss of future earnings — Case stated — Land Acquisition Act (Cap. 272), ss. 5(1) & 33(1)(d).

On November 21, 1972 a fire destroyed a three-storey building popularly known as "Robinson's" at Raffles Place. At the date of the fire the said building was held under a Lease for 999 years from 1826 by the Agent of the Commission for the Administration of the Estate of the Portuguese Missions in China at Singapore. It was also the subject of a lease from the Portuguese Missions in China to Robinson & Co. Ltd. for a term of 27 years commencing from July 1, 1963 and expiring on June 30, 1990. The Robinson's building was sub-leased in its entirety to Robinson & Co. (S) Pte. Ltd. by a Sub-Lease dated November 4, 1969 for an unexpired residue of a term of 27 years less one (1) day from July 1, 1965. At the date of the fire Robinson & Co. (S) Pte. Ltd. were the sole occupants of the said building.

On January 16, 1973 the President made a declaration under section 5 of the Land Acquisition Act declaring that the "Robinson's" site was needed for a public purpose. On January 17, 1973 the declaration was published in the *Government Gazette*. On February 7, 1973 the Collector of Land Revenue pursuant to section 8 of the Land Acquisition Act issued and served Notices on the agent of the Portuguese Missions in China at Singapore, Robinson & Co. Ltd. and Robinson & Co. (S) Pte. Ltd. giving them notice that the Government intends to acquire the Robinson's site and requiring them to appear at the office of the Collector of Land Revenue on March 7, 1973 to state *inter alia* the nature of their interest and the amount and particulars of their claims to compensation. The Portuguese Mission claimed \$8.4 million as compensation. Robinson & Co. Ltd. and Robinson's & Co. (S) Pte. Ltd. jointly claimed \$7.5 million as compensation for their joint interest. On September 5, 1974 the Collector of Land Revenue took possession of the Robinson site and on July 16, 1976 the Collector made his award under which he determined the compensation and awarded \$5.6 million and apportioned it as to \$3.1 million to the Portuguese Missions and the balance of \$2.5 million to Robinson & Co. Ltd. and Robinson & Co. (S) Pte. Ltd. The Collector rejected the claim for loss of earnings by Robinson & Co. (S) Pte. Ltd. The appellants appealed to the Appeals Board constituted under the Land Acquisition Act. The questions in issue before the Board were shortly:

(a) In making his award the Collector applied the first and third provisos to section 33(1) of the Land Acquisition Act (before the amendment in 1973) and awarded one third of the vacant land value. This issue was disputed in principle.

A (b) The Collector had made no award or alternatively failed to take into account in making his award of the claim by Robinson & Co. (S) Pte. Ltd. under section 33(1)(d) of the said Act as in force at the relevant time namely the claim for loss of actual earnings.

The Board being of the view that these two issues raised questions of law relating to the construction and application of the provisions of section 33 of the said Act, without proceeding to the determination of the appeal, stated a case on the questions of law for the opinion of the Court of Appeal. The questions of law as set out in the case stated were as follows:—

- B " (i) whether there has been in the present case 'an acquisition for any purpose specified in sub-section (1) of section 5 of this Act' of the subject land within a period of six months of the land being devastated or affected directly or indirectly by fire;
- C (ii) if, which is not admitted, the acquisition is held to have taken place within the six months' period contemplated by the Act how is the Board to interpret the requirement that it shall 'consider the market value of the land immediately before it was devastated or affected as aforesaid, having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters but without taking into account the value of any buildings or structures, permanent or otherwise on the land at the material time' in the context of the facts of the present case;
- D (iii) how is the Board to interpret section 33(1)(d) (before its amendment by the Land Acquisition (Amendment) Act 1973) with particular reference as to whether in determining the amount of compensation the actual loss of earnings of the third appellant, Robinson & Company (Singapore) Pte. Ltd. ought to be taken into consideration in the context of the facts of the present case."
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Held: (1) the only intention behind the addition of the limiting words "in the case of any such acquisition within a period of six months" was to free the devastated land from the seemingly harsh effect of the three provisos as originally enacted so that where land is devastated by fire or any act of God and the Government is considering acquiring such land under the Act with the benefit of the three provisos to the then section 26(1) and the present section 33(1), the Government, if it decides to acquire it, must act under section 5(1) within 6 months of the devastation. Accordingly the answer to the first question was in the affirmative;

(2) the Board (and the Collector) in the context of the facts of the present case must consider the market value of the land immediately before its devastation by fire on the basis that it could not have been conveyed with vacant possession as it was subject to the leases aforesaid. For this purpose a lease was an encumbrance;

(3) in the context of section 33(1) of the Act if loss of future earnings was excluded from being the subject matter of a claim under paragraph (d) of section 33(1), there could never be a claim because there would never be any actual loss. In the context of this case the third appellant was entitled to have its claim for compensation for loss of actual earnings considered and to payment of the amount of compensation if any.

[Historical Note: The firm of Robinson and Company was originally founded by Philip Robinson and James G. Spicer in 1858 and was called Spicer & Robinson, with premises at Nos. 9 and 10 Commercial Square (now Raffles Place). In 1859 the business was sold to Robinson & Company and in 1881 this business moved to Battery Road where the old Medical Hall Building stood. In 1891 the business moved back to Raffles Place close to the former Nos. 9 and 10 Commercial Square and in 1941 the business moved across the road to the building next door to Meyer Chambers.]

COURT OF APPEAL.

P.T.S. Boydell Q.C. for all the appellants with *H.M. Dyne* for the first and *L.P. Thean* for the second and third.